IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11716 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

HARESHBHAI T PARGIR

Appearance:

1. Special Civil Application No. 11716 of 2002

MR ASHISH M DAGLI for Petitioner No. 1

MR MUKESH H RATHOD for Respondent No. 1

MR NIRDOSH H RATHOD for Respondent No. 1

MR GK RATHOD for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 01/12/2003

ORAL JUDGEMENT

RULE. At the joint request of the learned advocates the matter is taken up for final disposal.

2. Gujarat State Road Transport Corporation (hereinafter referred to as "the Corporation") has filed the present petition challenging the judgement and award in Reference (LCB) No.215 of 1997 dated 31.5.2002 as the termination order dated 9.3.1996 is quashed and set aside by the learned Judge of the Labour Court, Bhavnagar by partly allowing the reference ordering reinstatement, with continuity of service on the original post with 80% back wages. The learned Judge was also pleased to award cost of Rs.1000/-, in favour of the workman.

3. Mr.Dagli, the learned advocate invited attention of the Court to the fact that on the day of the incident, i.e. 26.8.1994 the workman was on duty as driver during night hours, from Talaja to Mahuva. The case of the petitioner corporation is that the workman gave the bus to an unknown person to drive. While the bus was driven by an unauthorised person the bus met with an accident and damage to the extent of Rs.40,000/- was caused to the bus and five persons sustained serious injuries. The workman had given a statement (a copy of which is produced at Annexure 'G') to the effect that he was not well and that an unknown person wearing 'Khaki' clothes offered his services to drive the bus, which the workman accepted under an assumption that the said person was an ST Driver. He has further stated in his statement that he did not that persons at all, but only because he was wearing Khaki clothes he trusted that unknown person because he was not well. The offence committed by the workman is grave enough to warrant punishment of dismissal form service, more particularly, when a person holding the post of driver, having responsibility of lives of the passengers of the bus cannot be expected to behave in this irresponsible manner. Instead of handing over the bus to an unknown person, he ought to have preferred to stop the bus. Instead of that he handed over the bus to an unknown person, which is grave and grave enough to justify the punishment imposed by the Department.

4. The learned Judge, for the reasons recorded by him mainly being influenced by the judgement of the criminal court has partly allowed the reference and quashed the order of termination and ordered reinstatement on the original post with continuity of service and with 80% back wages. Mr.Dagli for the petitioner corporation submitted that the amount payable by back wages comes to Rs.2,43,000/-, and odd. He

submitted that it amounts to giving an award to a workman who had gravely, irresponsibly behaved in a public employment. He, therefore, submitted that the judgement and award of the Labour Court requires to be quashed and set aside by this Court and order of dismissal passed by the petitioner corporation is required to be restored. Mr.G.K. Rathod, the learned advocate for the respondent workman submitted that firstly the criminal court has acquitted the workman. Secondly, the punishment of dismissal is a penalty of economic death and that will visit the members of the family of the workman along with him. He strenuously submitted that if at all this Court is to interfere with the judgement and award of the Labour Court, the same should be limited to the back wags only granted by the Labour Court and the same may be reduced to an extent deemed fit by this Court. Mr.Rathod submitted that the Labour Court has applied its mind to the facts of the case and has passed the judgement and award, which does not warrant any interference by this Court.

5. Mr.Dagli, the learned advocate for the petitioner corporation submitted that so far as non payment of back wages is concerned it is a consequential order and in fact the learned Judge of the Labour Court has not awarded any punishment for such a grave misconduct on the part of the respondent workman and therefore, he submitted that appropriate punishment is required to be imposed. He submitted that if at all the employment of respondent is to be protected, the same should be by giving fresh appointment only.

6. Having considered the submissions of both the learned advocates and taking into consideration the facts of the case this court is of the considered opinion that the judgement and award of the Labour Court be modified as indicated hereunder.

7. The order of reinstatement on the original post with continuity of service is upheld. But so far as granting of 80% back wages is concerned the same is quashed and set aside. Taking into consideration that non payment of back wages is not a substantial punishment the punishment of stoppage of three increments without future effect be imposed. The respondent workman be paid regular salary from the date of reinstatement only. No payment for the intervening period.

8. Rule is made absolute to the aforesaid extent. No order as to costs.

(Ravi R. Tripathi, J.)

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